

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN WASHINGTON REGION  
STATE OF WASHINGTON

EDWARD COYNE AND WEST RICHLAND  
CITIZENS FOR SMART GROWTH,

Petitioners,

v.

CITY OF WEST RICHLAND AND CHARLES  
GRIGG,

Respondents.

Case No. 13-1-0005

**FINAL DECISION AND ORDER**

**I. SYNOPSIS**

On January 31, 2014, the Board held a Hearing on the Merits in West Richland, Washington. The Board finds and concludes the City of West Richland is in compliance with the requirements of the Growth Management Act (GMA) relating to the City's Comprehensive Plan Amendments and associated area-wide rezone adopted on July 16, 2013.

**II. BURDEN OF PROOF AND STANDARD OF REVIEW**

For the purposes of Board review of the comprehensive plans and development regulations adopted by local governments, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local governments.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations, and amendments to them are presumed valid upon adoption:

Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

1 The statute further provides that the standard of review is whether the challenged  
2 enactments are clearly erroneous:<sup>1</sup>

3 The board shall find compliance unless it determines that the action by the  
4 state agency, county, or city is clearly erroneous in view of the entire record  
5 before the board and in light of the goals and requirements of this chapter.

6 In order to find the County's action clearly erroneous, the Board must be "left with the  
7 firm and definite conviction that a mistake has been made."<sup>2</sup>

8 Within the framework of state goals and requirements, the Board must grant  
9 deference to local governments in how they plan for growth.<sup>3</sup>

10  
11 In recognition of the broad range of discretion that may be exercised by  
12 counties and cities in how they plan for growth, consistent with the  
13 requirements of this chapter, the legislature intends for the board to grant  
14 deference to counties and cities in how they plan for growth, consistent with  
15 the requirements and goals of this chapter. Local comprehensive plans and  
16 development regulations require counties and cities to balance priorities and  
17 options for action in full consideration of local circumstances. The legislature  
18 finds that while this chapter requires local planning to take place within a  
19 framework of state goals and requirements, the ultimate burden and  
responsibility for planning, harmonizing the planning goals of this chapter,  
and implementing a county's or city's future rests with that community.

20 The burden is on Petitioners to overcome the presumption of validity and  
21 demonstrate that any action taken by the County is clearly erroneous in light of the goals  
22 and requirements of Chapter 36.70A RCW (the GMA).<sup>4</sup> Where not clearly erroneous, and  
23 thus within the framework of state goals and requirements, the planning choices of local  
24 government must be granted deference.  
25

### 26 III. PROCEDURAL HISTORY

27 The Petition for Review was filed on September 10, 2013.

28 On December 3, 2013, the Board denied Respondents' Motion to Dismiss For Lack  
29 of Service of Process, filed by Respondents on November 4, 2013.  
30

31 <sup>1</sup> RCW 36.70A.320(3).

32 <sup>2</sup> *Dept. of Ecology v. PUD1*, 121 Wn.2d 179, 201 (1993).

<sup>3</sup> RCW 36.70A.3201.

<sup>4</sup> RCW 36.70A.320(2).

1 On December 3, 2013, the Board deferred ruling on Respondents' Motion for Partial  
2 Dismissal of the Petition for Review for Lack of Subject Matter Jurisdiction, filed by  
3 Respondents on November 4, 2013, until the Hearing on the Merits.

4 The Hearing on the Merits was held on January 31, 2014, in West Richland,  
5 Washington with the Eastern Washington Regional Panel comprised of Presiding Officer  
6 Raymond L. Paoella and Board Member Chuck Mosher. Board Member Cheryl Pflug was  
7 unable to attend the hearing but read the Verbatim Report of Proceedings. In attendance at  
8 the Hearing on the Merits were: Edward Coyne and Leslie Hauer, members of Petitioners  
9 West Richland Citizens for Smart Growth; Attorney Bronson Brown, representing  
10 Respondent City of West Richland; and Attorney Brian G. Davis, representing Respondent  
11 Charles Grigg.  
12

#### 13 14 IV. BOARD JURISDICTION

15 To invoke the Board's jurisdiction to review compliance with the GMA, a party with  
16 standing must comply with the statute's procedural requirements:  
17

- 18 a) file a petition for review that includes a detailed statement of issues presented for  
19 resolution by the Board;<sup>5</sup>
- 20 b) file the petition for review within 60 days after publication by the legislative body of  
21 the county;<sup>6</sup> and
- 22 c) allege that the government agency is not in compliance with the requirements of  
23 the GMA.<sup>7</sup>

24 The Board finds and concludes that the Petitioners have standing and complied with  
25 the GMA's procedural requirements to invoke the Board's jurisdiction. The Board has  
26 jurisdiction to hear and decide the Comprehensive Plan issues presented for review in this  
27 case.  
28  
29  
30

31 <sup>5</sup> RCW 36.70A.290(1).

32 <sup>6</sup> RCW 36.70A.290(2). In addition to the GMA, the Board also has jurisdiction to hear and determine certain  
petitions alleging noncompliance with the Shoreline Management Act and the State Environmental Policy Act.

<sup>7</sup> RCW 36.70A.280(1)(a).

1 **V. DISCUSSION AND ANALYSIS**

2 Petitioners challenge Ordinance Nos. 25-13 and 26-13 adopted on July 16, 2013, by  
3 the City Council of the City of West Richland, Washington, which approved a  
4 Comprehensive Plan Amendment and Rezone from RL-40 (Low Density Single Family  
5 Residential) to C-G (Commercial-General) for certain property located in the City of West  
6 Richland. Petitioners have raised 14 issues that fall into four general allegation categories:  
7 improper notice, failure to comply with adopted rules, lack of findings, and inconsistency  
8 with the Comprehensive Plan. The 14 issues will be discussed under Petitioners' four  
9 allegation categories, as argued in Petitioners' Prehearing Brief.  
10

11  
12 **A. IMPROPER NOTICE**

13 Issue 3: Did the City fail to provide notice for the Area Wide Rezone in notices mailed  
14 to property owners or published in the newspaper, as required by RCW 36.70A.035  
15 (1) and WRMC 17.78.030.A & B?

16 Issue 9: Was there, in fact, "continuous public participation" as the City claims and as  
17 required by the RCW 36.70A.140, WRMC Chapter 14.03, WRMC 14.09.100, and  
18 WRMC 17.78.030, when notices did not identify the proposed actions and incorrectly  
19 stated the procedure was Type IV, an error that was corrected at the final City  
20 Council hearing when the procedure type was identified as a Type VII procedure,  
21 leaving citizens unprepared to submit comments and depriving citizens of the  
22 opportunity to be heard before the City Council in a meaningful way?

23 **Applicable GMA Provisions**

24 RCW 36.70A.035 provides in pertinent part as follows:  
25

26 (1) The public participation requirements of this chapter shall include notice  
27 procedures that are reasonably calculated to provide notice to property  
28 owners and other affected and interested individuals, tribes, government  
29 agencies, businesses, school districts, and organizations of proposed  
30 amendments to comprehensive plans and development regulation. Examples  
of reasonable notice provisions include:

31 (a) Posting the property for site-specific proposals;  
32

1 (b) Publishing notice in a newspaper of general circulation in the county,  
2 city, or general area where the proposal is located or that will be affected by  
3 the proposal;

4 (c) Notifying public or private groups with known interest in a certain  
5 proposal or in the type of proposal being considered;

6 (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade  
7 journals; and

8 (e) Publishing notice in agency newsletters or sending notice to agency  
9 mailing lists, including general lists or lists for specific proposals or subject  
10 areas.

11 (2)(a) Except as otherwise provided in (b) of this subsection, if the  
12 legislative body for a county or city chooses to consider a change to an  
13 amendment to a comprehensive plan or development regulation, and the  
14 change is proposed after the opportunity for review and comment has  
15 passed under the county's or city's procedures, an opportunity for review and  
16 comment on the proposed change shall be provided before the local  
17 legislative body votes on the proposed change.

18 (b) An additional opportunity for public review and comment is not  
19 required under (a) of this subsection if:

20 (i) An environmental impact statement has been prepared under chapter  
21 43.21C RCW for the pending resolution or ordinance and the proposed  
22 change is within the range of alternatives considered in the environmental  
23 impact statement;

24 (ii) The proposed change is within the scope of the alternatives available  
25 for public comment;

26 (iii) The proposed change only corrects typographical errors, corrects  
27 cross-references, makes address or name changes, or clarifies language of  
28 a proposed ordinance or resolution without changing its effect;

29 (iv) The proposed change is to a resolution or ordinance making a capital  
30 budget decision as provided in RCW 36.70A.120; or

31 (v) The proposed change is to a resolution or ordinance enacting a  
32 moratorium or interim control adopted under RCW 36.70A.390.

1 RCW 36.70A.130(2)(a) provides:

2 Each county and city shall establish and broadly disseminate to the public a  
3 public participation program consistent with RCW 36.70A.035 and  
4 36.70A.140 that identifies procedures and schedules whereby updates,  
5 proposed amendments, or revisions of the comprehensive plan are  
6 considered by the governing body of the county or city no more frequently  
than once every year. . . .

7 RCW 36.70A.140 provides:

8 Each county and city that is required or chooses to plan under RCW  
9 36.70A.040 shall establish and broadly disseminate to the public a public  
10 participation program identifying procedures providing for early and  
11 continuous public participation in the development and amendment of  
12 comprehensive land use plans and development regulations implementing  
13 such plans. The procedures shall provide for broad dissemination of  
14 proposals and alternatives, opportunity for written comments, public  
15 meetings after effective notice, provision for open discussion, communication  
16 programs, information services, and consideration of and response to public  
17 comments. In enacting legislation in response to the board's decision  
18 pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or  
19 development regulation invalid, the county or city shall provide for public  
20 participation that is appropriate and effective under the circumstances  
21 presented by the board's order. Errors in exact compliance with the  
22 established program and procedures shall not render the comprehensive  
land use plan or development regulations invalid if the spirit of the program  
and procedures is observed.

23 **Board Analysis and Findings**

24 Petitioners generally allege as follows:

- 25
- 26 • The City's "early and continuous public participation" failed to meet RCW  
27 36.70A.035, 36.70A.130(2)(a) and 36.70A.140, and the WRMC  
28 requirements adopted to comply with these RCW provisions. The  
29 January 23, 2013 "public meeting" with citizens was by "invitation only."  
30 The April 11 Planning Commission public hearing was the first opportunity  
31 for public comment, and opponents identified many issues and concerns,  
32 including traffic, maintaining the livability of the neighborhood, "sprawl" of  
the commercial development south along Bombing Range Road, impact  
on Flat Top Park, and so on.

- There was no notice that the City would consider an Area Wide Rezone, until the item appeared on the Planning Commission agenda for April 11, 2013.
- The City's failure to provide "early and continuous public participation" precluded fulfillment of RCW 36.70A.010 Planning Goal (11) Public Participation.<sup>8</sup>

Respondents assert many examples of reasonable notice as outlined in RCW 36.70A.035 were used and followed by the City in the implementation of the 2012 Comprehensive Plan Amendments and Area Wide Rezone, and also several meetings regarding the 2012 Comprehensive Plan Amendment and Area Wide Rezone were conducted over several months with the required notices issued to the necessary parties. For example, the City held neighborhood meetings with several private property owners, sent personal letters to private landowners, held a noticed public work session on Comprehensive Plan amendments, and held several other noticed public meetings before the Planning Commission and City Council during the period March 14, 2013, through June 18, 2013.<sup>9</sup>

RCW 36.70A.035 does not prescribe a particular type of notice that is required at the earlier stages of process for amending a comprehensive plan. Moreover, RCW 36.70A.140 states that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

In their briefing, Petitioners do not allege a failure by the City to adopt the public participation program and notice procedures called for by RCW 36.70A.035, 36.70A.130, and 36.70A.140. Furthermore, Petitioners did not present any legal arguments showing how the adoption of Ordinance Nos. 25-13 and 26-13 violated specified provisions of RCW 36.70A.035, 36.70A.130, or 36.70A.140. For example, Petitioners did not show that the GMA requires a particular form of notice be given prior to the April 11, 2013, Planning Commission agenda announcing that the City would consider an Area-Wide Rezone.

<sup>8</sup> Prehearing Brief for Petition for Review, p. 9 (December 18, 2013).

<sup>9</sup> Hearing on the Merits Brief of Respondents City of West Richland and Charles Grigg, pp. 7-8 (January 8, 2014).

1 Therefore, the Board finds and concludes Petitioners failed to satisfy their burden of  
2 proof to demonstrate that Ordinance Nos. 25-13 and 26-13 were clearly erroneous in view  
3 of the entire record before the Board and in light of the goals and requirements of the  
4 Growth Management Act.  
5

6 **B. FAILURE TO COMPLY WITH ADOPTED PROCEDURES**  
7

8 Issue 2: Did the City Council and/or Planning Commission fail to properly initiate the  
9 Area Wide Rezone, as required by West Richland Municipal Code 17.78.010B.1.a  
10 and WRMC 17.78.020.B?

11 Issue 4: Contrary to WRMC 14.09.080.C.11, WRMC 14.09.100.A, WRMC  
12 17.09.080.D, WRMC 17.78.010.A & B, and WRMC 17.09.100, did the City improperly  
13 apply the Area Wide Rezone process to three lots under separate ownerships – two  
14 of which were purchased by separate owners subsequent to the close of the 2012  
15 Docket – rather than consider the zoning map amendment as separate, site-specific  
16 land use amendments, a process change which affected type of notice, nature of  
17 findings, and level of evidence required for approval?

18 Issue 11: Contrary to RCW 36.70A.130 and WRMC 14.09.030, did the City  
19 improperly add Lots 1 and 28, which are under separate ownerships and which were  
20 purchased by current owners after the deadline for the 2013 Comprehensive Plan  
21 Review Docket, to consideration of Comprehensive Plan and Zoning Map  
22 Amendment Docket, since an application for Comprehensive Plan Amendment – and  
23 not for rezoning – was submitted only for Lot 29, which was under the applicant's  
24 ownership prior to the deadline for applications?

25 Issue 12: When did the City initiate or amend – by motion of the City Council or  
26 Planning Commission as required by WRMC 17.78.020.A and WRMC 17.78.100 –  
27 the original application proposed as “Commercial-Neighborhood” designation to  
28 “Commercial-General,” a designation completely out of character with the area and  
29 the neighborhood?

30 **Applicable GMA Provisions**

31 RCW 36.70A.130(2)(a) provides:

32 Each county and city shall establish and broadly disseminate to the public a  
public participation program consistent with RCW 36.70A.035 and  
36.70A.140 that identifies procedures and schedules whereby updates,  
proposed amendments, or revisions of the comprehensive plan are

1 considered by the governing body of the county or city no more frequently  
2 than once every year. . . .  
3

#### 4 **Board Analysis and Findings**

5 Petitioners allege under Issues 2, 4, 11, and 12 that the City of West Richland failed  
6 to follow its own procedures leading to the adoption of Ordinances 25-13 and 26-13 and that  
7 the City acted improperly to apply the Area Wide Rezone process to Lots 1, 28, and 29.  
8 Much of Petitioners concerns here overlap with their allegations of inadequate notice,  
9 discussed in the preceding section captioned "Improper Notice."<sup>10</sup>  
10

11 Respondents state there is nothing improper about the Area Wide rezone – first, it  
12 was initiated by the City; second, it dealt with a "significant class of property" by reclassifying  
13 three parcels and the right of way between them to Commercial-General (CG) and to  
14 reclassify another parcel as multi-family residential; and third, the Area Wide rezone was  
15 initiated to satisfy and to be consistent with the proposed 2012 Comprehensive Plan  
16 Amendments.<sup>11</sup>  
17

18 Petitioners did not present any legal arguments showing how the adoption of  
19 Ordinance Nos. 25-13 and 26-13 violated specified provisions of RCW 36.70A.040,  
20 36.70A.130, or WAC 365-196-640(1)(b). Petitioners did not allege that the City failed to  
21 establish and broadly disseminate to the public a public participation program under RCW  
22 36.70A.130. Petitioners' concerns relating to initiation of an Area-Wide Rezone suggest that  
23 perhaps the City could have involved the public at an earlier stage of review, possibly prior  
24 to the April 11, 2013, Planning Commission meeting, but in any case the Petitioners have  
25 not adduced evidence in the record showing any violation of a specific GMA requirement.  
26

27 Therefore, the Board finds and concludes Petitioners failed to satisfy their burden of  
28 proof to demonstrate that Ordinance Nos. 25-13 and 26-13 were clearly erroneous in view  
29 of the entire record before the Board and in light of the goals and requirements of the  
30 Growth Management Act.  
31

32  

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<sup>10</sup> Prehearing Brief for Petition for Review, pp. 10-11 (December 18, 2013).

<sup>11</sup> Hearing on the Merits Brief of Respondents City of West Richland and Charles Grigg, p. 9 (January 8, 2014).  
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1 **C. LACK OF FINDINGS**

2 Issue 5: Did the City Council make findings on whether to include any of the  
3 Comprehensive Plan amendments on the 2012 docket (considered in 2013), or pass  
4 a motion to identify the 2012 Docket, as required by WRMC 14.09.120 and WRMC  
5 14.090.160?

6 Issue 6: Did the City Council consider provisions of WRMC 14.09.120, WRMC  
7 14.09.150, and WRMC 14.09.160 and make written findings as required in approving  
8 the Comprehensive Plan amendment, especially because that proposed amendment  
9 was rejected unanimously by the Planning Commission?

10 Issue 8: Is the proposed rezoning a "spot zone," contrary to WRMC 17.60.020.H,  
11 because the City's 2010 Comprehensive Plan map and Official Zoning Map appear to  
12 separate the three lots at issue from nearby commercially-zoned properties by a state  
13 highway right of way and major irrigation district canal right of way, and the lots  
14 proposed for rezoning are not connected to any existing commercial zoned area and  
15 are separated from commercially designated areas by significant physical barriers?

16 Issue 10: Did the City Council provide findings sufficient to explain the approval of the  
17 Comprehensive Plan and zoning map amendments, in light of the Planning  
18 Commission's unanimous rejection of the proposal and considering the denials for  
19 essentially the same proposal for all or part of the same area in 2000, 2010, and  
20 2011, ignoring the requirement of West Richland Municipal Code 14.09.120.A to  
21 show a change in circumstances and the approval criteria of WRMC 17.60.020?

22 **Board Analysis and Findings**

23 As to Issue 10, on December 3, 2013, the Board deferred ruling on Respondents'  
24 Motion for Partial Dismissal, until the Petitioners' briefing could be considered at the Hearing  
25 on the Merits. Upon reviewing Petitioners' briefing relating to Issue 10, the Board finds no  
26 legal arguments referring to a cited GMA provision and no legal arguments explaining how  
27 Issue 10 involves a violation of a specified requirement of the Growth Management Act.  
28 Accordingly, the Board must dismiss Issue 10 because Petitioners failed to state any claim  
29 upon which the Board has authority to decide.

30 Under Issues 5, 6, and 8, Petitioners allege that in adopting Ordinance Nos. 25-13  
31 and 26-13, the City of West Richland:  
32

- In establishing the 2012-2013 Docket, the City Council made no findings or inadequate findings.
- the “Findings” do not identify the evidence relied upon or address the testimony of opponents, which touched on the potential for traffic problems at the City’s busiest intersection, the large number of vacant or underdeveloped commercially designated properties which demonstrated an adequate commercial land supply, potential impacts on an established neighborhood with a narrow, minimally developed street, or the likelihood that allowing commercial development to “leak” south from the primary commercial corridor would put pressure on adjacent properties to develop commercially.
- Even if the GMHB determines that the City’s “Findings” are acceptable, there are no findings at all addressing the criteria for a zoning change in WRMC 17.60.020.
- Petitioner believes that the inadequate and missing findings to support the initiation of the Comprehensive Plan amendment and the City’s decision on the amendment and rezoning requires at minimum a remand for reconsideration of the decision.<sup>12</sup>

Respondents assert the City Council did make sufficient findings when adopting the 2012 Comprehensive Plan amendments by adopting the City staff’s recommended findings and conclusions and state this this is memorialized in Ordinance 25-13. Respondents also argue the West Richland Municipal Code does not require findings at the early stage of approving the 2012 docket for Comprehensive Plan Amendments.<sup>13</sup>

Petitioners’ briefing and oral argument failed to cite any section of the Revised Code of Washington, failed to quote any specific language from the GMA, and failed to argue that the alleged lack of findings constituted non-compliance with a specific “requirement” of the Growth Management Act. This Board has previously recognized appellate court case law holding that meaningful appellate review requires entry of adequate and detailed findings of

<sup>12</sup> Prehearing Brief for Petition for Review, pp. 13-15 (December 18, 2013).

<sup>13</sup> Hearing on the Merits Brief of Respondents City of West Richland and Charles Grigg, pp. 10-11 (January 8, 2014).

1 fact and conclusions of law.<sup>14</sup> But Petitioners still have the burden of proof to show  
2 noncompliance with a requirement of the GMA. Petitioners have failed to do so. Therefore,  
3 the Board finds and concludes Petitioners failed to demonstrate that Ordinance Nos. 25-13  
4 and 26-13 were clearly erroneous in view of the entire record before the Board and in light  
5 of the goals and requirements of the Growth Management Act.  
6

#### 7 **D. INCONSISTENCY WITH THE COMPREHENSIVE PLAN**

8  
9 Issue 1: As required by RCW 36.70A.010, WRMC 14.09.160.C, WRMC 17.06.020A,  
10 WRMC 17.78.010.A, WRMC 17.18.100, and WRMC 17.60.020, did the City  
11 improperly amend the Comprehensive Plan and Zoning maps, not to serve the public  
12 interest but for the benefit of an individual, including actions taken outside of public  
13 view, since no public benefit or public interest has been identified through the  
14 process or specified in findings, and the neighborhood has continuously opposed the  
15 action through testimony at public hearings?

16  
17 Issue 7: Is the Commercial designation for the City-owned lot appropriate or  
18 necessary, if the purpose truly is to site a public facility as a “minor utility facility”  
19 rather than support the interests of a private property owner, since a “minor utility  
20 facility” is allowed in the present designation, Residential Low Density Zone (WRMC  
21 17.24.030.G) or the more appropriate Public Use District (WRMC Chapter 17.15),  
22 which limits uses to public facilities?

23  
24 Issue 13: Did the City improperly use its own funds and staff resources – incorrectly  
25 and inappropriately supporting the interest of a private citizen rather than the public  
26 interest – to pay for a traffic study that was prepared following questions raised at the  
27 Planning Commission’s hearing by opponents, a traffic study that should have been  
28 submitted and paid for by the applicant as required by WRMC 14.09.080.C.7?

29  
30 Issue 14: Did the City incorrectly uses its Comprehensive Plan Policy in Chapter III  
31 Land Use, Goal 3, Policy 4, to support use of “passed over” lots to justify a change in  
32 Comprehensive Plan and Zone Designation, when many lots totaling approximately  
100 acres currently with commercial designation should have been considered and  
without balancing this policy against Land Use Goal 5, Policy 1, Housing Goal 3,  
Policy 3, Economic Development Goal 3, Policy 2 and Goal 4, Policy 1, or Appendix  
III, Policies to Implement RCW 36.70A.110, Policy #1, Item 2?

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<sup>14</sup> *Citizens for Responsible and Organized Planning v. Chelan Co.*, 105 Wn. App. 753 (2001).

1 **Applicable GMA Provisions**

2 RCW 36.70A.010 contains Legislative Findings:

3 The legislature finds that uncoordinated and unplanned growth, together with  
4 a lack of common goals expressing the public's interest in the conservation  
5 and the wise use of our lands, pose a threat to the environment, sustainable  
6 economic development, and the health, safety, and high quality of life  
7 enjoyed by residents of this state. It is in the public interest that citizens,  
8 communities, local governments, and the private sector cooperate and  
9 coordinate with one another in comprehensive land use planning. Further,  
10 the legislature finds that it is in the public interest that economic development  
11 programs be shared with communities experiencing insufficient economic  
12 growth.

11 Under RCW 36.70A.070, the Comprehensive Plan shall be an internally consistent  
12 document and all elements shall be consistent with the future land use map. The term  
13 "consistency" has been defined as follows: "Consistency means comprehensive plan  
14 provisions are compatible with each other. One provision may not thwart another."<sup>15</sup>

15 RCW 36.70A.130(1)(d) requires that "[a]ny amendment of or revision to development  
16 regulations shall be consistent with and implement the comprehensive plan."  
17

18 **Board Analysis and Findings**

19 Petitioners allege in their brief as follows:

- 20
- 21 • The City's decision is not consistent with the Comprehensive Plan because it
  - 22 provided no findings to balance competing goals and policies.
  - 23 • Opponents argued forcefully that the proposed amendment would impact their
  - 24 neighborhood. They provided evidence that there were many – perhaps as many
  - 25 as 100 acres – undeveloped or underdeveloped commercially designated
  - 26 properties within the City and, in particular, along the Van Giesen corridor. These
  - 27 properties should have been considered as "passed over" land referred to in Land
  - 28 Use Goal 3, Policy 4, rather than changing the zoning designation in a completely
  - 29 separate and non-commercial area.
  - 30 • The City has repeatedly used city resources and attempted to hide actions from
  - 31 the public in order to promote the private interest of the applicant.
  - 32 • The Mayor directed City staff to prepare maps and a traffic study, paid for by the

<sup>15</sup> *Five Mile Prairie Neighborhood Association v. Spokane County*, GMHB Case No. 12-1-0002, Final Decision and Order (August 23, 2012), at 10.

- city with the mayor authorizing payment “out of the street fund from savings associated with the pavement management program study” without authorization from the City Council or through a budget process – a traffic study that should have been submitted with the application and paid for by the applicant.
- The City staff and City funds were used to provide documents, analysis and mapping that should have been submitted and paid for by the applicant.<sup>16</sup>

Respondents allege that the City Council made finding #3 that states:

“The proposed amendment is consistent with many goals, policies and objectives of the comprehensive plan such as:

*“Encourage the use of previously passed-over parcels within areas characterized by urban growth”*

*“Encourage a walkable community by supporting small commercial nodes located within walking distance of residential development”*

*“Plan adequate commercial and industrial land use to provide a sufficient tax base to support City services and facilities”*

*“Promote commercial and industrial development that creates economic diversification in a sustainable economy. Provide adequate appropriately zoned land to accommodate the City’s projected commercial and industrial needs”<sup>17</sup>*

The respondent added that the City has no GMA requirement to comment on all the possible goals, policies, and objectives in the Comprehensive Plan.

In order to satisfy their burden of proof to show an inconsistency with the Comprehensive Plan, Petitioners must point to specific language in challenged Ordinance 25-13 or 26-13 that is incompatible with or thwarts specific language in the existing Comprehensive Plan. The alleged lack of ordinance findings or the alleged impacts on the neighborhood do not constitute an inconsistency with the Comprehensive Plan. Under the GMA, using City funds to advance a project is not an inconsistency with the Comprehensive Plan because Petitioners have not pointed to any provision of the Comprehensive Plan incompatible with such a use of funds.

Petitioners have not come forward with any specific evidence of a Comprehensive Plan inconsistency. Petitioners have not identified specific language in challenged

<sup>16</sup> Prehearing Brief for Petition for Review, pp. 15-20 (December 18, 2013).

<sup>17</sup> Hearing on the Merits Brief of Respondents City of West Richland and Charles Grigg, Ex.14, pp. 186-190 (January 8, 2014).

1 Ordinance 25-13 or 26-13 that is incompatible with or thwarts specific language in the  
2 existing Comprehensive Plan. RCW 36.70A.010 contains general Legislative Findings as  
3 opposed specific GMA requirements imposed on cities and counties. In their briefing and at  
4 the hearing, Petitioners did not make any legal arguments citing RCW 36.70A.070 or RCW  
5 36.70A.130(1)(d). Therefore, Petitioners have failed to satisfy their burden of proof to show  
6 that adoption of Ordinance 25-13 or 26-13 created an inconsistency with the  
7 Comprehensive Plan. The Board finds and concludes Petitioners failed to demonstrate that  
8 Ordinance Nos. 25-13 and 26-13 were clearly erroneous in view of the entire record before  
9 the Board and in light of the goals and requirements of the Growth Management Act.  
10

11  
12 **E. CONCLUSION**

13 Petitioners have failed to satisfy their burden of proof to come forward with evidence  
14 demonstrating that adoption of City of West Richland Ordinance Nos. 25-13 and 26-13 were  
15 clearly erroneous in view of the entire record before the Board and in light of the goals and  
16 requirements of the Growth Management Act. Issues 1 through 14 must be dismissed, and  
17 an order finding compliance will be entered.  
18

19  
20 **VI. ORDER**

21 Based on the foregoing, the Board finds and concludes that the City of West  
22 Richland's actions adopting Ordinance Nos. 25-13 and 26-13 complied with the  
23 requirements of the Growth Management Act. This case is closed.

24 Entered this 5<sup>th</sup> day of March, 2014.  
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Raymond L. Paolella, Board Member

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Chuck Mosher, Board Member

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Cheryl Pflug, Board Member  
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1 Pursuant to RCW 36.70A.300 this is a final order of the Board.<sup>18</sup>

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<sup>18</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.